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BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION  
DOCKET SECTION  
96 AUG -2 PM 4:14

Joint Application of

UNITED AIRLINES, INC

and

AIR CANADA

under 49 U.S.C. §§ 41308 and 41309 for  
approval of and antitrust immunity for  
an expanded alliance agreement

Docket OST-96-1434 -12

ANSWER OF NORTHWEST AIRLINES, INC.

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August 2, 1996

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ANSWER OF NORTHWEST AIRLINES, INC.

Northwest Airlines, Inc. ("Northwest"), pursuant to Order 96-7-16 issued and served by the Department on July 12, 1996, hereby files the following Answer to the Joint Application of United Airlines, Inc. ("United") and Air Canada for antitrust immunity for their commercial alliance agreement (the "Joint Application"). For the reasons set forth below, the Joint Application should be denied.

The Department has firmly established a policy to consider antitrust immunity for alliances only where there is a fully effective "open skies" agreement in place. The rationale for this policy is twofold. First, the existence of an open skies regime leaves other U.S. carriers free to mount competitive responses to

meet consumer demand and reflect the interplay of market forces.<sup>1</sup> Second, the availability of antitrust immunity serves as a strong inducement for other trading partners to liberalize their aviation regimes with the United States.<sup>2</sup>

In approving the American/Canadian antitrust immunity application, however, the Department made a one time exception to its policy of requiring open skies as a prerequisite to antitrust immunity, citing what the Department perceived to be unique competitive conditions in the U.S.-Canada transborder market. In both the Show Cause and Final Orders approving the American/Canadian antitrust immunity application, however, the Department drew a distinction between, on the one hand, the competitive conditions in the Montreal and Vancouver markets and, on the other hand, the Toronto market.

We conclude, therefore, that the U.S.-Montreal/Vancouver markets, which become *de jure* open in February 1997, will be open before the proposed expansion of the alliance can have an impact on competition, and that, as a consequence, the Montreal and Vancouver markets are already open *de facto*, and the remaining nominal limitations do not justify

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<sup>1</sup> See Joint Application of Northwest-KLM for Antitrust Immunity, Show Cause Order 92-11-27 at 15-16 (Nov. 16, 1992) ("Because of the Open Skies accord, any U.S. carrier may serve the Netherlands from any point in the United States. As a result, other carriers have the opportunity and ability to enter the U.S.-Netherlands market and to increase their service if the applicants try to raise prices above competitive levels (or lower the quality of service below competitive levels).")

<sup>2</sup> See Id. at 14 ("We look to our Open Skies accord with the Netherlands and our approval and grant of antitrust immunity to the [Northwest-KLM] Agreement to encourage other European countries to agree to liberalize their aviation services so that comparable opportunities may become available to other U.S. carriers.")

our withholding of approval and immunity for the short period until all restrictions are removed.

Thus the only potentially troublesome market at issue is the Toronto-U.S. market, but CAI has a relatively small share -- five percent -- of the traffic in that market. American has a larger share, 21 percent, while Air Canada has the largest share, 40 percent. Air Canada, not CAI, has a hub at Toronto. Consequently, to the extent the [American/CAI] alliance strengthens American's position at Toronto, it will enhance competition in the U.S.-Toronto market.

Order 96-7-21 at 21.

While granting antitrust immunity to the American/Canadian alliance arguably will enhance competition vis-a-vis Air Canada, awarding antitrust immunity to the United/Air Canada alliance would substantially lessen competition in the U.S.-Toronto market. With its large Toronto hub, Air Canada already has more than a 40% share of the total U.S.-Toronto market.<sup>3</sup> The United/Air Canada combination would produce a 49.1% market share based on seats and a 53.5% market share based on departures.<sup>4</sup> The integration of United/Air Canada would greatly expand the joint network by increasing each airline's access to beyond points, and thereby further entrenching Air Canada's already dominant position in the

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<sup>3</sup> In its Show Cause Order, the Department found that Air Canada has a 41.2% market share of transborder U.S.-Toronto passengers. According to an Attachment to Air Canada's June 4, 1996 objection to the Department's Show Cause Order tentatively approving the American/Canadian antitrust immunity application, Air Canada has 43.3% of the U.S.-Toronto market based on seats and 49.9% market share based on departures.

<sup>4</sup> See Attachment to Answer of Air Canada to Show Cause Order, dated June 4, 1996 (Docket OST-95-792).

U.S.-Toronto market. Moreover, allowing United to coordinate with Air Canada would give United the unique ability to, in effect, circumvent the phase-in restrictions applicable to other U.S. carriers and benefit from the "head start" afforded to Air Canada under the bilateral. At the same time, other U.S. carriers would be unable to mount a competitive challenge to an United/Air Canada combination due to the bilateral's transitional restrictions.


Northwest's inability to serve Toronto from its Minneapolis hub is a perfect example of the inability of U.S. carriers to competitively discipline Air Canada's services to Toronto. While Northwest is completely foreclosed from serving the Minneapolis-Toronto market, Air Canada enjoys an absolute monopoly on the Minneapolis-Toronto route. Even if Northwest is awarded one of the four route opportunities available under the third year transitional provisions of the bilateral, Northwest will be limited to two daily frequencies. Air Canada, on the other hand, presently operates four daily nonstop flights between Minneapolis and Toronto and is completely unrestricted in its ability to increase that level of service at any time.

Granting United/Air Canada antitrust immunity before expiration of the transitional restrictions on U.S. carriers would substantially lessen competition in the U.S.-Toronto market by further strengthening Air Canada's dominant position in the U.S.-Toronto market. The proposed alliance therefore fails to satisfy the statutory requirements for antitrust immunity set forth in 49 U.S.C. § 41309. Moreover, approval of the Joint Application

despite the U.S.-Canada bilateral's significant restrictions on U.S. carrier entry into the largest Canadian market would send a very dangerous signal to other U.S. trading partners, such as the United Kingdom, that antitrust immunity may be obtained without open skies.

WHEREFORE, Northwest Airlines, Inc. respectfully urges the Department to deny the Joint Application of United/Air Canada until the transitional provisions of the U.S.-Canada bilateral have expired.

Respectfully submitted,

  
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August 2, 1996

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I hereby certify that on this 2nd day of August 1996, I served a copy of the foregoing document of Northwest Airlines on the following individuals by first class mail, postage prepaid:

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